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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,157	03/19/2004	Yoshihiro Murano	1018995-000743	7420

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BUCHANAN, INGERSOLL & ROONEY PC  
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EXAMINER
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FOLEY, SHANON A

ART UNIT	PAPER NUMBER
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1619

NOTIFICATION DATE	DELIVERY MODE
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05/13/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/804,157	<b>Applicant(s)</b> MURANO ET AL.	
	<b>Examiner</b> SHANON A. FOLEY	<b>Art Unit</b> 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 3/18/08.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 20-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-10 and 12-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

The Group and/or Art Unit of your application has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1619, Examiner Foley.

An updated search revealed pertinent references required to be made of record. Prosecution is being reopened.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 13 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lopez de Hierro US (6,037,492).

The claims are drawn to a fertilizer, a melanin production-inhibitory agent and a blackening/browning-inhibitory composition comprising maslinic acid that has been extracted from an olive and defatted.

Lopez de Hierro anticipates maslinic acid purified from defatted olives, see column 2, line 38 to column 3, line 15.

Recitation of the intended use of the instant maslinic acid as a fertilizer, a melanin production-inhibitory agent or a blackening/browning-inhibitory agent does not result in a discernable structural difference between the claimed invention and the purified maslinic acid of Lopez de Hierro. A preamble is generally not accorded any patentable weight where it merely

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recites the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lopez de Hierro *supra* and Vitagliano (FR 2 316 881, see Derwent English abstract attached).

The claims are drawn to a feed comprising a maslinic acid and an additional component selected from fish meal, soybean meal or a combination. The claims also require that the compound be obtained from a defatted from an olive product using an insoluble organic solvent and a water-containing alcohol.

Vitagliano teach combining defatted olive products to fish meal, see the Derwent abstract provided.

Vitagliano does not teach a defatting process or maslinic acid.

However, Lopez de Hierro teaches a process for obtaining maslinic acid from the residues of whole olives or parts thereof in a process of defatting by adding hexane and then methanol, column 5, lines 10-28 and column 6, lines 3-9.

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One of ordinary skill in the art at the time the invention was made would have been motivated to use the defatting process of obtaining maslinic acid of Lopez de Hierro as the defatted olive feed supplement of Vitagliano because Lopez de Hierro teaches that maslinic acid has antihistamine and anti-inflammatory properties, see column 1, lines 57-64. One of ordinary skill in the art at the time the invention was made would have had a reasonable expectation of using the maslinic acid of Lopez de Hierro in the feed of Vitagliano since the olive product used as a supplement in the feed product of Vitagliano is defatted and the maslinic acid of Lopez de Hierro is purified from a defatted process.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lopez de Hierro and Vitagliano as applied to claims 1 and 3-8 above, and further in view of Aeschbach et al. (US 6,309,652), or Comai et al. (US 4,218,443), in the alternative.

The claims require that the feed composition additionally comprise antioxidants.

See the teachings of Lopez de Hierro and Vitagliano above. Neither suggests antioxidants.

However, Aeschbach et al. teach extracting antioxidants from olives, see column 1, lines 44-48 and column 2, lines 55-56. Since olives contain both fat and water-soluble antioxidants according to Aeschbach et al., it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have applied the antioxidants from the olives taught by Aeschbach et al. to apply to the feed of Vitagliano and Lopez de Hierro to conserve resources and materials.

Alternatively, Comai et al. teach the addition of antioxidants, such as vitamin E to animal feeds, such as soybean meal and fish meal, see column 16, line 52 to column 17, line 17. One of

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ordinary skill in the art at the time the invention was made would have been motivated to add conventional antioxidants to the feed of Vitagliano and Lopez de Hierro to supplement the nutritional value of the feed.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lopez de Hierro and Vitagliano as applied to claims 1 and 3-8 above, and further in view of Takagi et al. (US 4,571,256).

The claim requires a fertilizer of maslinic acid, oil meal and a mineral mixture.

See the teachings of Lopez de Hierro and Vitagliano above. Neither reference teaches or suggests maslinic acids in combination with a mineral and an oil meal.

However, Takagi et al. teach a fertilizer comprising fish meal, a vegetable oil cake and a mineral, see column 4, lines 5-21.

One of ordinary skill in the art at the time the invention was made would have been motivated to combine the ingredients of Takagi et al. to the maslinic acid-containing composition of Lopez de Hierro and Vitagliano because Takagi et al. teach that the combination is an effective fungicide, see examples 5-7 of Takagi et al. One of ordinary skill in the art at the time the invention was made would have been motivated to use olives as the base for the vegetable oil cake of Takagi et al. since olives contain an abundance of oil that is separated from the maslinic acid in the defatting process of Lopez de Hierro. One of ordinary skill in the art at the time the invention was made would have had a reasonable expectation of success for combining the ingredients of Takagi et al. with the composition of Lopez de Hierro and Vitagliano since both compositions comprise fish meal and reciprocally complimentary vegetable products of oil in the cakes of Takagi and the defatted maslinic acid of Lopez de Hierro and Vitagliano.

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***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure

Kazuo (US 6,447,834) teaches a triterpene oleanoic acid as a feed additive for livestock, such as pigs, cows and fish, see column 2, lines 42-50.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANON A. FOLEY whose telephone number is (571)272-0898. The examiner can normally be reached on M-F 5:30 AM-3 PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shanon A. Foley/  
Primary Examiner  
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